IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 28, 2007 Session

FRANK E. HAREN, SR. v. STATE OF TENNESSEE, COMMISSIONER OF REVENUE

Appeal from the Chancery Court for McMinn County
No. 21681 Jon Kerry Blackwood, Senior Judge

No. E2006-01973-COA-R3-CV - FILED AUGUST 28, 2007

Frank E. Haren, Sr., ("Haren") is the sole proprietor of an entity that exists under the name of F.E.H. Enterprises ("F.E.H."). He is also the chief executive officer and a stockholder of a corporation named Haren Construction Company, Inc. Haren attended auctions in Tennessee and other states and purchased used construction equipment in the name of F.E.H. Haren would represent to the various auction companies with which he dealt that the equipment was being purchased for resale, thereby avoiding the payment of sales tax. Following these transactions, Haren Construction would reimburse F.E.H. for the amount of Haren's successful bids. It would not pay F.E.H. any sales tax on these transactions. The Tennessee Commissioner of Revenue ("the Commissioner") determined that Haren had fraudulently avoided the payment of sales tax. The Commissioner issued a tax assessment against Haren individually for the sales tax due on the purchases of the equipment by Haren Construction from F.E.H., as well as an additional assessment for fraud. Haren filed suit challenging the assessment. The trial court upheld the amount of the assessment as well as the fraud penalty. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Howard B. Jackson, Knoxville, Tennessee, and G. Michael Yopp, Nashville, Tennessee, for the appellant, Frank E. Haren, Sr.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Stuart G. Richeson, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee, Commissioner of Revenue.

OPINION

I.

The complaint in this tax case was filed by Haren challenging a $368,037 sales and business tax assessment, which includes a penalty for fraud. He claimed the assessment was "unjust, illegal, or incorrect." According to the complaint,

> [t]he Commissioner has assessed taxes to Mr. Haren based on the incorrect theory that Mr. Haren does business as "F.E.H. Enterprises."[1] In fact, Mr. Haren gave the name "F.E.H. Enterprises" to a checking account that he started decades ago to separate his personal investments and other similar activities from his household account. F.E.H. Enterprises is simply a personal checking account of Mr. Haren's, and is not a business.
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> From time to time, Mr. Haren purchases equipment on behalf of Haren Construction Company, Inc., using funds from his F.E.H. Enterprises account. Shortly thereafter, Haren Construction Company reimburses Mr. Haren for the exact amount of the purchase.
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> Mr. Haren is the Chief Executive Officer of Haren Construction Company.
>
> When he attended equipment auctions and otherwise engaged in activities to purchase equipment for Haren Construction Company, Mr. Haren was at all times acting on behalf of, and as the agent of, Haren Construction Company.
>
> The Commissioner assessed taxes and penalties against Mr. Haren on grounds that F.E.H. Enterprises was engaged in the business of buying and selling construction equipment, and that when Mr. Haren received reimbursement from Haren Construction Company for purchases made by him using the F.E.H. Enterprises account, that act of reimbursement constituted a taxable sale under Tennessee law.
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> F.E.H. Enterprises was not regularly engaged in the business of selling construction equipment. F.E.H. Enterprises has no location, equipment, or employees. There are no advertisements for F.E.H. Enterprises. Mr. Haren does not hold F.E.H. Enterprises out as a

[1] Throughout the record, "F.E.H. Enterprises" is often referred to as "FEH Enterprises." For the sake of consistency, all references in this opinion to this entity have been changed to "F.E.H. Enterprises," or simply "F.E.H."

> dealer of construction equipment, or as a retail business of any kind. All the so called "sales" of F.E.H. Enterprises were to Haren Construction Company, and were for the exact amount of the purchase by Mr. Haren. In other words, Mr. Haren made no profit, and did not attempt to make a profit, on the alleged sales to Haren Construction Company.

(Paragraph numbering in original omitted).

Haren contended that, since he was not regularly engaged in the business of selling construction equipment, the transactions with Haren Construction were not subject to the tax imposed under the taxing authority of T.C.A. § 67-6-202(a) (2006).[2] In addition, Haren argued that these transactions are exempt from sales tax because they come within the language of T.C.A. § 67-6-102(3) (2006).[3] Haren asked the trial court to vacate the assessment and award him reasonable attorney fees pursuant to T.C.A. § 67-1-1803(d) (2006).

The Commissioner answered the complaint and denied that the assessment was improper. She maintained, in an amended answer, that, following an informal conference, the assessment was established as follows:

> The state and local sales/use tax liability was reduced to $159,680.00, penalty to $105,813, and interest recalculated to $93,378, for a total of $358,871.00 as of April 30, 2002. Additional interest continues to accrue in accordance with T.C.A. § 67-1-801. There were no adjustments to the business tax assessment, which continues to show an outstanding balance of $5,198 for the county and city tax liability, $1,130 in penalty and $2,638.00 in accrued interest, for a total of $9,166.00 as of April 30, 2002.

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[2] T.C.A. § 67-6-202(a), as pertinent to this case, provides, in part, as follows:

> For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; . . .

[3] T.C.A. § 67-6-102(3), as pertinent to this case, provides, in part, as follows:

> "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. . . .

The Commissioner filed a counterclaim seeking to recover the amount of the sales and business tax due. She contended as follows:

> The assessment of Frank E. Haren, Sr., was properly made and notice thereof given in accordance with Tennessee law, and is valid and binding under Tennessee law applicable to the audit period at issue, particularly T.C.A. §§ 67-6-101 *et seq.* as to the sales tax and use tax and T.C.A. §§ 67-4-701 *et seq.* as to the business tax.
>
> The 100% fraud penalty was assessed pursuant to T.C.A. § 67-1-804(c) because during the audit period between January 1994 and December 2000, Frank E. Haren, Sr., using funds from his bank account "F.E.H. Enterprises", purchased 28 pieces of equipment, which eventually became the assets of Haren Construction Company, Inc. During the initial purchase of the equipment from various sources, Frank E. Haren, Sr. marked all of the invoices with either the notation "dealer", "for resale", or "tax exempt" to avoid sales tax being charged on the invoice. In each case, sales tax was not paid by Frank E. Haren, Sr. DBA F.E.H. Enterprises. Sales tax was not remitted to the state from Frank E. Haren on the transfer of equipment to the final recipient and end user, Haren Construction Company, Inc. Additionally, Mr. Haren told the Special Agents that he represents himself at auction as a dealer in construction equipment as a way of avoiding paying sales tax in those states where he purchases equipment. The purchases of heavy construction equipment, paid for out of the F.E.H. Enterprises account, either by Mr. Haren or an authorized signor to the account, were made in a willful attempt to avoid paying sales tax.
>
> Frank E. Haren, Sr. was regularly involved in the purchasing of heavy construction equipment during the audit period. The auditor identified 28 separate purchases made by him using the F.E.H. Enterprises bank account from April 30, 1994 through April 25, 1999, totaling $2,617,492.75. Of these 28 purchases, 25 related to auctions occurring in at least 10 different states (including Tennessee) presented by 11 different auction companies. The remaining three purchases were from two different individuals and a local farm supply business. If an agency relationship between Frank E. Haren, Sr. DBA F.E.H. Enterprises and Haren Construction Company, Inc. had been established, sales tax would have been due at the time of the initial purchase under Tenn. Code Ann. Section 67-6-210(a). Haren Construction Company, Inc. is the end user of the equipment. Frank E. Haren, Sr. made these purchases and transferred the heavy

> construction equipment to Haren Construction Company with the specific intent to evade the sales tax due, thus justifying imposition of a fraud penalty.
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> The Commissioner is entitled to a judgment in her favor against Frank E. Haren, Sr., in the amount of three hundred sixty-eight thousand, thirty seven dollars ($368,037.00) plus accrued statutory interest, attorney's fees, expenses as provided under T.C.A. § 67-1-1803(d), costs and all other appropriate relief authorized under Tennessee law.

(Paragraph numbering in original omitted).

Each of the parties filed a motion for summary judgment, both of which were denied. A trial took place in May 2006. Haren testified that he is the chief executive officer of Haren Construction. He described the company as being primarily a "water and waste water treatment plant contractor . . . ." According to him, he had been in charge of the company since 1962 or 1963. Haren testified that, in 1960, he opened a checking account in the name of F.E.H. He stated that this account was used as a savings account and was also used by him as a mechanism for separating personal expenses from business expenses. Haren denied that F.E.H. was a retail business. He maintained that F.E.H. had no physical location, no business license, and had not engaged in any advertising.

During the 1990s, Haren attended various auctions. He stated that Haren Construction could not afford to buy new equipment. He claimed that when he purchased used equipment at auctions, he did so as an officer and employee, *i.e.*, as an agent, of Haren Construction. He noted that Haren Construction paid his expenses incurred in connection with his trips to the auctions. According to him, items purchased at the auctions were shipped to Haren Construction. He said the company bought insurance on this equipment.

Haren further testified that there were two reasons he registered at the auctions under the name of F.E.H. First, this enabled him to avoid the trouble of obtaining letters of credit for Haren Construction. Furthermore, he noted that he had become well known to the auctioneers. He said they would try to raise the bid if they knew Haren Construction was bidding. He testified that he used a "ring man" to bid for him. Haren stated that, in 1991, he learned at an auction that Tennessee did not collect sales tax on items purchased and sold from "contractors to contractors." According to Haren,

> [he] discerned that some of these equipments that sold tax exempt in Knoxville were from interstate operations, contractors putting equipment in sales in interstate operations, and that gave [him] a understanding that contractor to contractor sales anywhere were tax exempted in Tennessee. . . .

> [He] always would only bid on contractors' equipment, because . . . contractor to contractor sales are tax exempted from the examples [he] saw in Tennessee, and so [he] followed contractors' equipment, not dealers' equipment.

After successfully bidding on a piece of construction equipment, Haren explained to the sales clerk that the item was exempt from sales tax in Tennessee. The sales clerks would generally check with a supervisor, but, according to Haren, he would eventually convince the clerks that the sales were tax exempt. Haren said he would not have purchased the equipment had he known that he would be required to pay sales tax.

On cross-examination, Haren admitted purchasing equipment for over $250,000 at an auction in Maryland. The invoice shows that the sale was to F.E.H. Haren signed the purchase contract on behalf of F.E.H. The sales contract states that if the items were not for resale, then sales taxes had to be paid. The contract further indicates that the items purchased by F.E.H. were for resale. Specifically, the invoice states: "TAX STATUS: No Tax. Purchased for resale." (Capitalization in original). Haren claimed that he did not personally place the "for resale" language on the contract, but rather that it was the auctioneer who did so. Haren admitted that he signed the contract on behalf of F.E.H.

Haren was also questioned about purchases totaling $345,000 that were made in August 1996 at a Forke Brothers auction in Alabama. According to this sales contract, the items were purchased by F.E.H. and, once again, no sales tax was paid because these items supposedly were for "resale." Haren also identified a check drawn on the account of F.E.H. for $345,000 made payable to Forke Brothers, Inc.

In 1997, Haren attended a Forke Brothers auction in Charleston, West Virginia. At this auction, equipment was purchased by Haren/F.E.H. for a total price of $163,700. As with the above-referenced two auctions, (1) the sales contract states that the items were purchased by F.E.H.; (2) the sales contract provides that sales tax was not due because F.E.H. was purchasing the items for "resale"; and (3) a check drawn on the account of F.E.H. in the amount of the purchase price was given to Forke Brothers.

For the sake of brevity, we will not discuss each of the purchases made by F.E.H. during the relevant time frame. Suffice it to say that, at trial, Haren was questioned about all of the auction purchases that were at issue in this case, and all of these purchases followed the same pattern as the three discussed in the preceding paragraphs, *i.e.*, the items were purchased for "resale" by F.E.H. and no sales tax was paid.[4]

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[4] The Department of Revenue is seeking sales tax with respect to equipment purchased by Haren/F.E.H. at 10 of the 29 auctions under review by the Department. However, as noted elsewhere in this opinion, it is the sale of that equipment to Haren Construction that prompted the assessment by the Commissioner.

Following the trial, the court issued findings of fact and conclusions of law. The trial court found as follows:

> The Plaintiff is the CEO and major stockholder of Haren Construction Company of Etowah, Tennessee. The Company constructs and repairs waste water treatment plants. On May 2, 2002, the Department of Revenue issued a notice of assessment to Plaintiff, Frank E. Haren d/b/a/ F.E.H. Enterprises, imposing taxes, fraud penalty and interest covering twenty-nine (29) transactions from January 1, 1994 through December 31, 2002. Plaintiff filed this lawsuit challenging this assessment.
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> During the period in question, Plaintiff attended various auctions both in Tennessee and other states. His purpose was to purchase used construction equipment. At these auctions Plaintiff would register as "F.E.H. Enterprises" and equipment he purchased would be paid for by a check drawn on F.E.H. Enterprises' checking account. After Plaintiff returned from these auctions, Haren Construction Company would issue to him a check drawn on Haren Construction Company's account for the cost of the purchased equipment plus any expenses.
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> Plaintiff testified he established the F.E.H. Enterprises checking account several years prior to the audit period. The purpose for this account was to separate funds that he intended to invest from household expenses. Plaintiff testified that he never operated any business under the name of F.E.H. Enterprises. His stated purpose for registering at the auction as F.E.H. Enterprises was two-fold. First, this registration allowed him to avoid the time consuming process of obtaining letters of credit for Haren Construction Company. Second, since Plaintiff was known at the auctions, the auctioneers would encourage higher bids if they knew he was bidding on a piece of equipment.
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> Plaintiff testified that in 1991 he became aware that certain equipment was exempt from taxes if it was a "contractor to contractor sale." During this period, Plaintiff would register at the auctions as "F.E.H. Enterprises" and would use exemption forms, resale documents and an industrial machinery number to make purchases without paying taxes. The equipment would be shipped by commercial carrier to Haren Construction Company. Haren Construction Company would then reimburse Plaintiff. In all of these endeavors, Plaintiff claimed he was acting as the agent of Haren Construction Company.

The Court does not find the Plaintiff's testimony nor his position as agent to be credible. On August 11, 1995, at a Frank Bros. Auction, Plaintiff signed a blank certificate of resale which stated "Resale as Tangible Property." On August 20, 1996 at another auction by Rorke Bros., Plaintiff signed a registration certificate indicating he was the owner of F.E.H. Enterprises. Plaintiff also signed a document certifying that F.E.H. Enterprises was in the business of wholesaling, retailing, manufacturing and leasing. On November 7, 1996, at another auction, Plaintiff registered as owner of F.E.H. Enterprises. He signed a statement acknowledging criminal penalties for willfully evading tax. On April 30, 1994, and March 14, 1996, Plaintiff signed certificates that the purchased property was for resale. At a March 14, 1996 auction, he advised the auction company that he would not purchase the property if he had to pay tax. On at least two occasions he would present an industrial machinery exemption certificate in order to avoid the tax. None of the equipment purchased was incorporated into industrial machinery. Plaintiff's explanation for these inconsistencies ranged from "acting on the advice of a clerk" to deceitfulness of the auction company. Therefore, the Court finds that Plaintiff was not acting as the agent of Haren Construction Company but was operating as F.E.H. Enterprises.

As a result of that finding, the Court conclude[s] pursuant to Tennessee Code Annotated section 67-6-201, that F.E.H. Enterprises was engaged in selling tangible personal property at retail in this state.

The Court further finds that F.E.H. Enterprises is a business, and the object of gain, benefit or advantage was the avoidance of sales tax on used equipment for Haren Construction Company.

The Court finds and concludes that these transactions were not casual and isolated. As mentioned above, Plaintiff on numerous occasions held himself out as being engaged in the business of reselling tangible property.

In summary, the Court concludes that the Plaintiff is responsible and liable for the assessment made by the Department of Revenue in all twenty-nine (29) transactions.

The Court further finds that the fraud assessment made by the Department of Revenue pursuant to Tennessee Code Annotated section 67-1-804(c) is proper. The Court finds that the entire practice

> of Plaintiff at these auctions was willful and deceitful with intent to evade the tax.
>
> The Court finds that the negligence penalty imposed pursuant to Tennessee Code Annotated section 67-1-804 is proper and should be assessed.
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> In summary, the Court finds that the assessment made by the Department of Revenue is proper.

The court then entered a judgment incorporating its findings of fact and conclusions of law.

II.

Haren raises three issues on appeal. We state them verbatim from his brief:

> 1. Whether the Trial Court erred by failing to rule that Mr. Haren acted as an agent of Haren Construction Company, and therefore that the Commissioner is attempting to tax the wrong person[.]
>
> 2. Whether the Trial Court erred by failing to vacate the assessment, in part, based on unrebutted evidence showing that many sales at issue occurred outside of Tennessee[.]
>
> 3. Whether the Trial Court erred by affirming the fraud penalty[.]

III.

Since this matter was resolved at a bench trial, our standard of review is *de novo* upon the record of the proceedings below, with a presumption of correctness as to the trial court's factual determinations, a presumption we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d); ***Wright v. City of Knoxville***, 898 S.W.2d 177, 181 (Tenn. 1995). Our review of questions of law is *de novo* with no presumption of correctness attaching to the trial court's conclusions of law. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996).

IV.

The following principles of statutory construction in tax cases were enunciated by the Supreme Court in ***Eastman Chem. Co. v. Johnson***, 151 S.W.3d 503 (Tenn. 2004):

> [W]e must also consider the rules of construction specifically applicable to tax statutes. Statutes imposing a tax are to be construed strictly against the taxing authority. *See Covington Pike Toyota, Inc.*

> *v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992). However, statutes granting exemptions from taxation are construed strictly against the taxpayer. *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196, 198 (Tenn. 1994); *Covington Pike Toyota*, 829 S.W.2d at 135.

Eastman Chem. Co., 151 S.W.3d at 507. In ***Wylie Steel Fabricators, Inc. v. Johnson***, 179 S.W.3d 509 (Tenn. Ct. App. 2005), this Court observed:

> The legislature has provided that, when a taxpayer is assessed a tax liability by the Department which the taxpayer believes "to be unjust, illegal or incorrect," then the taxpayer may file suit "challenging all or any portion of the assessment of such tax including any interest and penalty associated therewith." Tenn. Code Ann. § 67-1-1801(a)(1)(B) (2003). When a taxpayer challenges a tax assessment issued by the Department, the court must presume the assessment to be correct. *Stratton v. Jackson*, 707 S.W.2d 865, 867 (Tenn. 1986).

Wylie Steel Fabricators, 179 S.W.3d at 522. *See also* ***Edmondson Mgmt. Serv., Inc. v. Woods***, 603 S.W.2d 716, 717 (Tenn. 1980) ("The burden of proof is upon the taxpayer to prove that the assessment made is incorrect and to prove its right to recovery by clear and convincing evidence. . . .").

V.

T.C.A. § 67-6-202(a) (2006) provides, in relevant part, as follows:

> For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property as defined in § 67-6- 702(d). . . .

The trial court found that F.E.H. was a business operated by Haren which purchased and then resold construction equipment. The facts demonstrate that at these auctions, Haren acted on behalf of F.E.H., his trade name, and, over the years, purchased in excess of $2,600,000 in used construction machinery. In each instance, F.E.H. transferred the equipment to Haren Construction. This is what the trial court found and, given the amount and frequency of these purchases, we cannot

say that the evidence preponderates against the trial court's factual finding that F.E.H. was a covered "business." The evidence is clear that Haren represented to the various auction companies on numerous occasions that F.E.H. was purchasing the equipment and that it was doing so for the purpose of resale. The evidence does not preponderate against the trial court's factual determination that F.E.H. purchased the construction equipment for resale.

We likewise reject Haren's claim that the purchases were isolated and casual. The relevant statutory provision is T.C.A. § 67-6-102(3)(A), (B) (2006), which provides, in relevant part, as follows:

> (3)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;
>
> (B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. . . .

F.E.H. was regularly engaged in the business of purchasing used construction equipment. That activity appears to be the only business engaged in by F.E.H. There were 29 purchases made over some 10 years for over $2,600,000. The evidence does not preponderate against the trial court's determination that these purchases were neither occasional nor isolated. By the same token, the evidence does not preponderate against the trial court's finding that Haren/F.E.H. was "regularly engaged in business." ***Id***.

Haren claims that the tax assessment is erroneous because no Tennessee sales tax can be collected on purchases that were not made in the State of Tennessee. This argument misses the point. The Commissioner is not attempting to tax the original purchase of the construction equipment made by F.E.H. Rather, the Commissioner's assessment was made with respect to the sale of the equipment by F.E.H. to Haren Construction.

We also reject Haren's argument that the tax assessment in this case should be against Haren Construction and not against Haren individually. Since the sale being taxed is the one between F.E.H. and Haren Construction, F.E.H., *i.e.*, Haren, was the one responsible for collecting the tax, not Haren Construction. Because F.E.H. is a sole proprietorship, Haren is responsible for the tax and the Commissioner is not seeking to tax the "wrong person" as claimed by Haren on this appeal.

The final issue is whether the trial court erred in upholding the fraud assessment. T.C.A. § 67-1-804(c)(1), (2) (2006) provides as follows:

> (c)(1) When any person fails to report and pay the total amount of taxes determined to be due by the commissioner, if such failure is determined by the commissioner to be due to fraud, there shall be imposed against the taxpayer a penalty in the amount of one hundred percent (100%) of the underpayment.
>
> (2) For the purpose of this subsection (c), "fraud" includes any deceitful practice or willful device resorted to with intent to evade the tax.

The trial court was required to determine if Haren acted with fraudulent intent or whether, as Haren claims, he was the unfortunate victim of bad advice or incorrect information given to him by the auction companies. There certainly was ample evidence from which the trial court could conclude that Haren used F.E.H. as a ruse to avoid paying sales tax. In its factual findings, the trial court specifically stated that neither Haren nor his position was credible. This finding played a key role in upholding the fraud assessment. In ***Wells v. Tennessee Bd. of Regents***, our Supreme Court discussed witness credibility:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990); *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. *See Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 425-26 (Tenn. 1989); *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987); *Bingham v. Dyersburg Fabrics Co., Inc.*, 567 S.W.2d 169, 170 (Tenn. 1978).

Wells v. Tennessee Bd. of Regents, 9 S.W.3d 779, 783 (Tenn. 1999). *See also* ***Lockmiller v. Lockmiller***, No. E2002-02586-COA-R3-CV, 2003 WL 23094418, at *4 (Tenn. Ct. App. E.S., filed December 30, 2003), *no appl. perm. appeal filed* ("The cases are legion that hold a trial court's determinations regarding witness credibility are entitled to great weight on appeal."). When the trial court's significant credibility determination is taken into account, we cannot say that the facts preponderate against the trial court's finding that Haren acted fraudulently in his attempt to avoid paying sales tax.

VI.

The judgment of the trial court is affirmed and this case is remanded to the court below for enforcement of the judgment and for the collection of the costs assessed there, all as authorized by law. Costs on appeal are taxed to the appellant, Frank E. Haren, Sr.

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CHARLES D. SUSANO, JR., JUDGE